The opinion in support of the decision being entered today was ***not*** written for publication and is ***not*** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DIETER BLASCHKE,
PETER NAIRN, MERRIE MARTIN,
EUGENE SCOVILLE and JENIFER CRAMER

Appeal No. 2004-2014
Application 09/874,672

ON BRIEF

Before PAK, OWENS and DELMENDO, ***Administrative Patent Judges***.

PAK, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the examiner's refusal to allow claims 1 through 20, which are all of the claims pending in the above-identified application.

APPEALED SUBJECT MATTER

The appellants have grouped the claims on appeal as follows:

Group I: Claims 1, 3-10, 16 and 17;

Group II: Claims 2, 19 and 20; and

Group III: Claims 11-15 and 18.

Therefore, for purposes of this appeal, we select claims 1, 2 and 11 from all the claims on appeal and decide the propriety of the examiner's rejection below based on these claims alone consistent with 37 CFR § 1.192(c)(7)(2003). ***See also In re McDaniel***, 293 F.3d 1379, 1384, 63 USPQ2d 1462, 1465-66 (Fed. Cir. 2002). Claims 1, 2 and 11 are reproduced below:

1. A ready-for-use frozen sweet dough and which is prepared from flour, sugar, a leavening agent in an amount from up to about 3% by weight and a fat, with the dough being in a sheet or block form having a generally rectangular configuration, a thickness and a surface which includes an imprint comprising intersecting grooves, score lines, or combinations thereof, which imprint defines pieces of the dough to be broken off and baked, wherein the grooves, score lines, or combinations thereof each have a width of from about 0.5% to about 50% of the thickness of the dough sheet or block and a depth of about 3% to about 95% of the thickness of the dough sheet or block.

2. The sweet dough of claim 1, wherein the groove, score line, or combination thereof has a depth of from about 5% to about 75% of the thickness of the sheet or block and a width of from about 1% to 35% of the thickness of the sheet or block.

11. The dough product of claim 1 in the form of a block having at least two different dough layers.

PRIOR ART

The examiner relies on the following prior art references:

Moline	3,765,909	Oct. 16, 1973
Weber	5,171,599	Dec. 15, 1992

A cover of Snap to Bake Cookies, Product of Pampas (unknown publication date)(hereinafter referred to as "Pampas").[1]

REJECTION

Claims 1 through 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Pampas, Moline and Weber.

OPINION

We have carefully reviewed the claims, specification and prior art, including all of the arguments advanced by both the examiner and the appellants in support of their respective positions. This review has led us to conclude that the examiner's Section 103 rejection is well founded. Accordingly,

[1] The appellants do not argue that Pampas is not available as "prior art."

we affirm the examiner's rejection. Our reasons for this determination follow.

Pampas teaches a frozen "Snap to Bake" cookie dough made of, ***inter alia***, flour, sugar, vanilla flavor and baking powder in the form of a block. Pampas also illustrates a generally rectangular block "Snap to Bake" dough having a thickness and a surface imprinted with intersecting lines (these lines are continuous, rather than discontinuous lines (notches or score lines)). According to Pampas, pieces of dough to be baked are snapped from the block (along the lines) before they are baked to produce cookies.

As acknowledged by the examiner (Answer, page 4), Pampas does not disclose score lines (notches) having the dimensions required by claims 1 and 2. However, from our perspective, one of ordinary skill in the art would have reasonably expected that appropriate imprints, such as score lines (notches), having appropriate dimensions would have provided the same function as the continuous lines taught in Pampas since they are structurally similar. As such, we determine that Pampas would have suggested the use of other imprints, such as the score lines having optimum

dimensions recited in claims 1 and 2, in lieu of the continuous lines, with a reasonable expectation of successfully breaking the frozen dough of the type described in Pampas.

In any event, as is apparent from Moline, score (broken) lines having appropriate dimensions are known to perform the same function as the unbroken lines taught in Pampas. See column 1, lines 30-35 and column 2, lines 35-40. Thus, we concur with the examiner that one of ordinary skill in the art would have been led to use score lines having optimum dimensions, such as those recited in claims 1 and 2, in the same manner as the continuous lines provided in the frozen dough of the type described in Pampas. One of ordinary skill in the art would have had a reasonable expectation of successfully using those imprints for the same breaking purpose.

Appellants separately argue that the applied prior art references do not teach or suggest a frozen dough having at least two different dough layers as required by claim 11. See the Brief, pages 11-12. However, the appellants have not challenged the examiner's official notice that "it is known in the art to layer different color dough to make checker board cookies." Compare the Answer, page 5, with the Brief and the Reply Brief in

their entirety. As such, we concur with the examiner that it would have been obvious to make the known checker board cookie dough in the form of a frozen rectangular block as suggested by Pampas alone, or Pampas and Moline, motivated by a reasonable expectation of obtaining the advantage stated in Pampas.

The appellants contend that Moline and Weber are nonanalogous art. See the Brief, pages 9-10.

The test of whether a prior art reference is from an analogous art is first, whether it is within the field of the inventor's endeavor, and second, if it is not, whether it is reasonably pertinent to the particular problem with which the inventor was involved. ***See In re Clay***, 966 F.2d 656, 658-59, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992); ***In re Wood***, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). "A [prior art] reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his [or her] problem." ***Clay***, 966 F.2d at 659, 23 USPQ2d at 1061.

Whether a prior art reference is from an analogous art is a question of fact. ***In re Paulsen***, 30 F.3d 1475, 1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994).

In the present case, we find that both Weber and Moline are within the field of the inventors' endeavor as they, like the claimed invention, are directed to frozen dough. While Weber discloses a refrigerated cookie dough composition, Moline discloses a frozen dough for making a pizza. Even if they are not considered to be within the field of the inventors' endeavor, we determine that they are at least directed to the problems associated with the claimed frozen dough and the frozen dough taught in Pampas. They are either directed to providing score lines for improving the breakability of frozen dough or improving a frozen dough composition. Thus, from our perspective, both Weber and Moline are analogous art and can be properly combined with Pampas.

In any event, as is apparent from the above findings, Weber and Moline are deemed cumulative with respect to the teachings provided in Pampas and the official notice taken by the examiner.

In view of the foregoing, we concur with the examiner that the claimed subject matter as a whole would have been obvious to one of ordinary skill in the art within the meaning of 35 U.S.C. § 103. Accordingly, we affirm the examiner's decision rejecting all of the claims on appeal under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

CHUNG K. PAK Administrative Patent Judge	)	
TERRY J. OWENS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
ROMULO H. DELMENDO Administrative Patent Judge	)	

CKP:psb

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